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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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COMMISSIONERS

TOM FORESE– Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE COMPANY FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RATEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.	DOCKET NO. E-01345A-16-0036
IN THE MATTER OF FUEL AND PURCHASED POWER PROCUREMENT AUDITS FOR ARIZONA PUBLIC SERVICE COMPANY.	DOCKET NO. E-01345A-16-0123

STAFF'S REPLY BRIEF

I. INTRODUCTION.

The Utilities Division Staff ("Staff") of the Arizona Corporation Commission ("Commission") submits the following Reply Brief in response to the initial post-hearing briefs in opposition to the Settlement Agreement ("Agreement") filed by the Southwest Energy Efficiency Project ("SWEEP"), AARP, the Districts,[1] Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District ("ED8/McMullen"), Warren Woodward and Richard Gayer.

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[1] The "Districts" include: Electrical District Number Six, Pinal County, Arizona ("ED6"), Electrical District Number Seven of the County of Maricopa, State of Arizona ("ED7"), Aguila Irrigation District ("AID"), Tonopah Irrigation District ("TID"), Harquahala Valley Power District ("HVPD"), and Maricopa County Municipal Water Conservation District Number One ("MWD").

II. REPLY TO SWEEP.

A. The Proposed Basic Service Charges for Residential, Extra Small, and General Services Customers Are Fair, Just, Reasonable, And In The Public Interest.

SWEEP argues that the proposed Basic Service Charges ("BSCs") are not cost based or cost justified.[2] SWEEP apparently excludes certain costs because the Basic Customer Method (also known as the Basic Service Method) which it supports includes just those costs which vary based upon the number of customers associated with meters, meter reading, billing, and customer service.[3] However, the Basic Customer Method overlooks other fixed costs that APS incurs in serving a customer such as the service drop.[4] SWEEP itself does not contend that the costs included in the BSCs are not fixed costs APS actually incurs. Further, in the recent Tucson Electric Power ("TEP") decision, the Commission explicitly stated that it used both the Basic Customer Method and the Minimum System Method to influence its policy decision regarding TEP's BSCs.[5] The proposed BSCs in the Agreement also use both methods.

SWEEP also asserts that the proposed increases in the BSCs reduce the amount of control customers have over their utility bills, and mute the price signal to customers to help them reduce their bills.[6] SWEEP's assertion overlooks the fact that a significant portion of customer bills is still recovered through volumetric charges that the customers have the ability to reduce through lower usage. In addition, the volumetric charges were lowered in many cases. This is apparent in the examples provided by SWEEP such as where a customer on the R-Basic rate with a summer bill of 700 kWh per month had a bill increase of only $4.08 but an increase in the BSC of $6.33. This customer clearly retains control over a significant portion of their bill since the overall rate increase is lower than the increase in the BSC.

For this reason, SWEEP attempts to justify its recommendations by focusing on the percentage increases in the BSCs instead of focusing on the overall bill impact percentage of the rate

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[2] SWEEP Initial Br. at 7.
[3] *Id.*
[4] Snook Reb. SA Test., Ex. APS-13 at 5.
[5] Decision No. 75975 at 64.
[6] SWEEP Initial Br. at 10.

increase on customers. Specifically, SWEEP argues that of the overall increase, 40% to 150% of it is recovered through the BSCs proposed in the Agreement.[7] While on its face the percent increases to the BSC appear to be very large at times, it is key to consider the overall rate increase percentage for the customers which tells the full story. SWEEP itself does not take issue with the overall rate increase which is 4.53% for the average residential customer.[8]

It is also important to note that SWEEP is a nonprofit agency that advances energy efficiency for customer benefits, for economic benefits, and for natural resource or environmental benefits.[9] It is through that narrowly focused lens of energy efficiency that SWEEP's proposals are presented. SWEEP's narrowly focused advocacy promoting energy efficiency unfortunately does not take into account the cost recovery concerns of the utility or the balancing of wide ranging interests that are reflected in the Agreement. For this reason, SWEEP would prefer that most of the rate increase go into the volumetric rates rather than the fixed charges. However, the rates as structured in the Agreement properly balance the needs of the customers to be able to continue to save through energy efficiency with the need for APS to be able to better recover its authorized revenue requirement.

SWEEP also suggests that BSCs for APS should not be set based on what has been authorized for other electric utilities.[10] For instance, APS witness Meissner testified that the BSCs set forth in the Agreement are in the range of those approved by the Commission in the recent TEP and UNS Electric decisions.[11] Those decisions authorized a BSC range of $10 to $15. Staff would agree with SWEEP that BSCs should not be developed solely by use of a comparison to what the Commission authorized for other electric utilities. Each utility is different, with different service territories, and different fixed costs. However, Staff believes that a comparison to other Arizona electric utility BSCs that have been determined in recent rate cases can be an appropriate benchmark or factor to consider among others. The BSCs set forth in the Agreement strike the appropriate balance and the Agreement should be approved without modification.

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[7] *Id.*
[8] Tr. Vol. VII at 1118.
[9] *Id.* at 1179.
[10] SWEEP Initial Br. at 15.
[11] Tr. Vol. III at 342.

B. SWEEP's Recommended TOU On-Peak Period Does Not Balance The Public Interest.

SWEEP continues to advocate for a shorter on-peak TOU period of three hours, from 4:00 pm to 7:00 pm.[12] Most of SWEEP's argument is premised on convenience in that the shorter on-peak period would be attractive to more customers and more customers would be able to work with and manage their energy usage during the peak periods, and as a result, additional customers would move to TOU rates.[13] While at face value what SWEEP is advocating may seem reasonable, the SWEEP advocacy is again narrowly focused and, unlike the Agreement does not strike the appropriate balance between customer needs and utility needs. To put this into context it is important to note that, as proposed in the Agreement, APS will have fewer on-peak hours that are aligned with APS's highest peaks and costs[14] and additional off-peak holidays.[15]

Further, it is undisputed that APS has a very broad peak where loads remain very near peak levels until as late as 9 pm.[16] Thus, even though APS's peak has not occurred after 7 pm, the loads remain very near peak until 8 to 9 pm. Even SWEEP acknowledges that peak periods can shift, and in fact, that APS's peak period has shifted over time to later in the day.[17] This supports approval of the 3 pm to 8 pm on-peak period set forth in the Agreement. For the reasons stated above and in its post-hearing brief, Staff believes the TOU period in the Agreement strikes that appropriate balance between the customer's ability to adjust usage into off-peak hours while recognizing that demand on APS's system can remain high after 7:00 pm and appropriate cost signal are thus being provided to encourage shifting customer load to off-peak hours.

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[12] SWEEP Initial Br. at 15.
[13] *Id.* at 16.
[14] Tr. Vol. III at 341.
[15] Settlement Agreement, Ex. APS-29 at 7.
[16] Meissner Reb. SA Test., Ex. APS-7 at 9.
[17] Tr. Vol. VII at 1174.

C. The Proposed 90-Day Trial Period Balances The Public Interest Of Preserving Customer Choice and Addressing APS's Concern Regarding More Modern Rate Structures.

SWEEP recommends elimination of the 90-day trial period in the Agreement asserting that all customers should be able to choose their rate from among the options they are eligible for, and that they should be able to do so on their very first day as an APS customer.[18] SWEEP does not assert anything in its brief that Staff has not already addressed in its post-hearing brief on this issue. The purpose of the 90-day trial period is to encourage the implementation of newer and updated rate designs going forward.[19]

Staff does agree with SWEEP's proposal that APS should be required to notify customers near the end of the 90-day period about the option to switch to another rate[20] and that such notification should be accompanied with information on the estimated bill impact of switching to another rate.[21] Staff believes the Agreement would allow for such notification.

Staff believes that inclusion of the 90-day trial period for new APS customers strikes the appropriate balance of giving customers options with respect to rate plans while also providing a reasonable means for APS to educate customers on new updated rate designs.

D. SWEEP Does Not Dispute That The Commission Can Refund The Collected But Unspent Ratepayer Funds.

SWEEP continues to be critical of the Agreement's provision to return $15 million collected, but unspent, ratepayer funds to mitigate the first year rate impacts to ratepayers. SWEEP essentially argues that these unspent customer funds should be addressed in APS's 2017 DSM Implementation Plan proceeding rather than as part of the Settlement Agreement in the APS rate case.[22] The Agreement provides that the unspent ratepayer funds that are in APS's DSMAC balancing account be returned to ratepayers. SWEEP acknowledges that the Commission has the authority to order the

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[18] SWEEP Initial Br. at 17.
[19] Smith Reb. SA Test., Ex. S-12 at 8.
[20] SWEEP Initial Br. at 17; Smith Reb. SA Test., Ex S-12 at 9.
[21] Smith Reb. SA Test., Ex. S-12 at 9.
[22] SWEEP Initial Br. at 19.

refund of these funds through the approval of the Agreement in this case.[23] SWEEP also acknowledges that the Commission has not decided how these funds will be used, and that they are not currently associated with any existing DSM programs.[24] Further, SWEEP's concerns regarding the future use of these funds are unfounded. As noted by APS, the Commission has the ability to modify the level of the DSMAC to collect sufficient funds to accomplish the Commission's priorities, which can address the concerns raised by SWEEP regarding adequate support for DSM programs and customer projects.[25] Finally, SWEEP's concerns regarding due process are similarly unfounded because it is Staff's understanding that the $15 million refund to ratepayers will actually take place in that docket. Approval of the Agreement in this case will simply set the refund in motion. For these reasons, Staff asserts that the Agreement's provision directing the refund of the collected but unspent ratepayer funds is in the public interest and should be approved.

III. REPLY TO AARP.

Many of the arguments raised by AARP in its initial brief were already addressed by Staff in its post-hearing brief. Some of the same arguments were also raised by SWEEP in its post-hearing brief, and have been addressed above. AARP provides little new support or argument beyond that already addressed by Staff in its post hearing brief or above in response to SWEEP, for its position that the Commission should decline to adopt (1) the Agreement's provisions regarding the R-Basic basic service charge of $15 per month, (2) the on-peak window for time of use rates and (3) the 90-day trial period for new ratepayers. Consequently, Staff relies on the arguments provided in its post-hearing brief and in its response to SWEEP above on these issues.

Like SWEEP, AARP asks the Commission (if it declines to reject the 90-day trial period for new ratepayers) to require APS to make new ratepayers aware of the rate options available to them at the conclusion of the trial period.[26] As noted above, Staff would support this type of customer notice. The Agreement already provides that APS will expend $5 million of over-collected DSMAC funds

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[23] Tr. Vol. VII at 1169.
[24] *Id.* at 1168.
[25] SWEEP Initial Br. at 19.
[26] AARP Initial Br. at 9-10.

toward ratepayer education and to help ratepayers manage new rates and rate options.[27] While it was not specifically addressed by Section XXVII of the Agreement, Staff does not see any inconsistency with the Agreement if the Commission were to require APS to develop a notice as part of its customer education program to inform new ratepayers, subject to the 90-day trial period, of their rate options at the conclusion of the trial period.

IV. REPLY TO THE DISTRICTS.

A. The Settlement Was Not The Result Of A Flawed Process.

The Districts argue that the Commission should reject the Agreement because it is the result of a flawed process.[28] The Districts portray the negotiations as one where "the parties with the least bargaining power were shut out of the settlement process and the settlement itself."[29] This was simply not the case and is a mischaracterization of what actually occurred. The negotiations were open to all parties in the rate case. No party was "shut out of the settlement process and the settlement itself."[30] Parties were given multiple opportunities to state their position on any given issue. All parties' positions were considered. The fact that 29 of the 40 parties in this case signed onto the Agreement is testament to the fact that the process was fair and inclusive; and did not act to shut anyone out.

The Districts also suggest that the participation of Staff imposed some sort of "power imbalance."[31] Staff does not agree. Staff was an impartial participant in that, unlike others with the exception of the Residential Utility Consumer Office ("RUCO"), it had no monetary interest in the outcome of the proceeding. Staff's goal in these cases is to assist the Commission in finding a resolution to each case that balances the interests of both the Company and its customers, that is in the public interest, and that results in rates that are just and reasonable to consumers.

The Districts also attempt to suggest that some parties may have felt compelled to sign on to the Agreement because Staff was a party.[32] There is absolutely no evidence to suggest that this was

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[27] Settlement Agreement, Ex. APS-29 at Sec. XXVII.
[28] Districts Cl. Br. in Opposition to Non-Unanimous at 2-3.
[29] *Id.* at 3.
[30] *Id.*
[31] *Id.*
[32] *Id.*

the case. Approximately ten parties did not sign onto the Agreement. The parties that did sign onto the Agreement did so for their own reasons and largely because of the fact that the Agreement addressed their particular issues and was otherwise a balanced resolution of the various issues raised in the case. While Staff is an arm of the Commission, it cannot bind the Commission. Simply because Staff signs onto an agreement is no guarantee that the Commission will adopt its provisions. Thus, the Districts' suggestion that Staff's participation creates a "bandwagon" effect where parties feel the need to join, "albeit reluctantly," is a misunderstanding of the process and other signatories' testimony in support of the Agreement.[33]

The Districts also argue that APS held "far more bargaining power than many other participants."[34] It is more likely that the Districts are simply mistaking or misinterpreting the unique position of the applicant in these cases with a heightened degree of "bargaining power" in this context. The focus was on APS in this case, because APS is the applicant. The applicant has the burden of proof and much of the information that requires examination is in the possession of the applicant. The Agreement reasonably balances APS's interests with those with the interests of consumers and stakeholders with divergent interests.

The Districts also suggest that the outcome was "predetermined" and that the intervenors had little influence on the process other than to voice their objections to it.[35] But this is also an unfair mischaracterization of the process. Had the process given only "lip service" to meaningful participation by the parties, the result would have likely been much different than an Agreement signed by 29 parties with diverse interests. It is also noteworthy that of the approximately 10 parties that did not sign the Agreement, only about six filed testimony in opposition to the Agreement. And several of those parties, expressly acknowledged and voiced support for many provisions in the Agreement.[36]

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[33] *Id.*
[34] *Id.*
[35] *Id.* at 4.
[36] *See* Staff Initial Cl. Br. at 20-21.

The Districts also allege that they were prevented from introducing evidence demonstrating that the settlement process was flawed.[37] Staff does not agree that the Districts were prevented from introducing evidence regarding the settlement process. The Districts are correct that Rule 408 does not prohibit all uses of evidence of a compromise.

> Rule 408 prohibits the use of evidence of a compromise offered 'to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement [.]' It does not, however, prohibit evidence of a compromise offered for another reason. [cites omitted].[38]

The exceptions listed in the Rule include uses such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution. The objections raised by Staff and others were to evidence offered by the Districts that attempted to characterize the positions of parties during negotiations, which under Rule 408 is normally inadmissible.[39] The ALJ's rulings on objections relating to Rule 408 were appropriate. In many instances the objections were also appropriate on other grounds. In addition, on at least one occasion, the Districts tried to suggest that the physical location of APS. Staff and RUCO at the front of the room suggested consensus or agreement as to the terms and provisions of the Agreement, a contention which was wholly without support.[40]

The Districts also argued that the fact that some meetings were held between Staff and other parties, outside of the larger settlement discussions, somehow meant that it was a closed process and that certain parties were favored over others.[41] This was certainly not the case. Staff met with any party that requested a meeting; there was no favoritism shown. In addition, Staff held several meetings with the solar interests and APS in an attempt to reach resolution on these very difficult issues. However, often times the others parties were informed of these meetings and invited to attend if they desired.

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[37] Districts Cl. Br. in Opposition to Non-Unanimous SA at 4.
[38] *Murray v. Murray*, 239 Ariz. 174, 367 P.3d (App. 2016).
[39] Tr. Vol. I at 189-91; Tr. Vol. VII at 1282-86.
[40] Tr. Vol.VI at 963-64; 966-67.
[41] Tr. Vol. VII at 1280-92; SA Districts Br. in Opposition to Non-Unanimous SA at 2-3.

B. The Settlement Agreement Does Not Result In A Windfall To APS.

The Districts also argue that the Agreement should be rejected because "ratepayers will pay hundreds of millions of dollars to provide a windfall to APS and to resolve APS's battle with EFCA."[42] The Districts filed no revenue requirement or rate design testimony in this case. Moreover, they apparently rely upon the initial direct testimony of Staff and RUCO to support their position that APS is obtaining a windfall under the Agreement.[43] However, as pointed out in Staff's Initial Closing Brief, Staff will oftentimes change the position taken in its direct case based upon additional information provided by the Company and the testimony of other parties. Thus, Staff believes that it is more appropriate to use the Company's requests in its original application as the baseline for comparison purposes.

V. REPLY TO ED8/McMULLEN.

A. APS's Application Was Thoroughly Reviewed And Evaluated.

Electrical District Number Eight and McMullen Valley Water Conservation & Drainage District argue that too many of APS's most recent rate cases have settled and that this provides little assurance that ratepayers "are not being taken advantage of by a monopoly whose primary interest is the financial well-being of its shareholders."[44] One of ED8/McMullen concerns has to do with the significant additions to rate base in recent years and the "lack of thorough scrutiny."[45] However, this ignores the extensive process Staff undertakes as part of each rate case to ensure that the assets were prudently acquired and are used and useful in serving customers. Staff hires expert consultants to examine the company's books and records, determine the prudence of new rate base expenditures and evaluate the company's various positions in the case.

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[42] Districts Cl. Br. in Opposition to Non-Unanimous SA at 2.
[43] *Id.;* Smith Direct Test., Ex. S-1 at 7; Radigan Direct Test. Ex. RUCO-2 at 7.
[44] ED8/McMullen Initial Br. at 7.
[45] *Id.* at 7.

B. Comparison Of The Settlement To The Company's Original Application Is Appropriate.

ED8/McMullen also expressed concern that Staff and RUCO did not use their direct case as the baseline when commencing settlement discussions; but instead used APS's initial case. ED8/McMullen's assertion that Staff recommended a rate decrease in its direct case is not correct. Staff recommended no revenue increase; since the amount of the rate surplus was de minimis.[46] As Staff has already stated above, it is not unusual for Staff's direct case to change based upon additional information provided by APS and the testimony filed by other parties. In the end, the Commission must assure that the Company has the financial wherewithal to ensure the continued reliability of electric service, to attract capital at reasonable rates, and to maintain reasonable rates for consumers.

VI. REPLY TO WARREN WOODWARD.

A. New Evidence Used By A Party After The Hearing Has Concluded, Should Be Given Little Weight.

At the outset of his brief, it appears that Mr. Woodward may be introducing new evidence to support his various positions in this case.[47] To the extent this is true, any weight given to it should reflect this fact. Further, if the material is new evidence, its use is contrary to the admonition from the Administrative Law Judge that briefs are to be based upon evidence in the record.[48] For this reason, those portions of Mr. Woodward's brief that rely on the new evidence that is not in the record should be afforded the same weight as any unsupported assertion made by any other party on brief.

B. Mr. Woodward's Attacks On The Process Are Unsubstantiated.

Mr. Woodward's attacks on the process and Staff's role in the case are unwarranted.[49] Staff would stress that it is impartial and that regardless of the outcome of this proceeding, Staff has "nothing to lose, nothing to gain" from any particular outcome of any application before the Commission. Staff's role is to make reasonable recommendations for consideration by the

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[46] Smith Direct Test., Ex. S-1 at 7.
[47] Woodward Post-Hearing Br. at 4-6.
[48] Pre-hearing Conference (4/20/2017) Tr. at 34 (requirement by ALJ Jibilian that briefs must contain citations to the factual record).
[49] Tr. Vol. VII at 1301-09.

Commission.[50] In formulating its recommendations, Staff is mindful of the Commission's obligation (as part of its determination of just and reasonable rates), to balance the interests of both the ratepayers and the utility. Favoring the ratepayer interest too much jeopardizes the utility's financial health and can impair its ability to continue to provide cost effective, reliable service. However, favoring the utility would not be fair to ratepayer interests forcing them to bear more than their fair share of the utility costs. As a signatory to the Agreement, Staff believes that the Agreement reflects the appropriate balance in this case and the process in arriving at the Agreement was fair.

C. The Agreement's Provisions Relating To AMI Meters Are Reasonable And In The Public Interest.

Many of Mr. Woodward's issues are focused upon the continued use of AMI metering by APS. Staff believes that the Agreement appropriately balances the interests of ratepayers such as Mr. Woodward who believe that AMI metering is unsafe with those of other ratepayers and the Company which has extensively deployed AMI metering at this point in time. The record reflects that implementation of AMI metering benefits ratepayers in many ways. Among other things, it lowers APS's costs to serve which in turn reduces expenses that ratepayers must shoulder.[51] AMI produces benefits by way of permitting remote billing changes to effectuate tariff change.[52] These benefits reduce operational costs for APS which in turn drive reduced operating expenses that must be recovered from ratepayers. Additionally, AMI metering gives ratepayers greater control over their bills and, therefore, more opportunities to save money.[53] AMI gives ratepayers useful data about their energy consumption that not only helps inform them in ways to fully exploit savings opportunities offered by time variable rate designs, it also opens the door to more sophisticated rate designs that extend further opportunities to reduce a ratepayer's bill. AMI metering also meets FCC safety requirements.[54]

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[50] *Id.* Vol. VII at 1275-76.
[51] Bordenkircher Reb. Test., Ex. APS-10 at 3.
[52] *Id.*
[53] *Id.*
[54] *Id.* at 6.

However, despite these benefits that are an appropriate basis on which to transition to AMI metering, the Agreement does not presume to dictate that all ratepayers must accept an AMI meter. The Agreement recognizes Mr. Woodward's interest in not having an AMI meter installed at his residence, because he is able to continue to select a non-standard meter. The Agreement also provides benefit to Mr. Woodward and other similarly situated ratepayers, because the monthly rate for non-standard meter reads is far below what APS estimates its cost to be.[55] This cost is likely to increase since analog meters are no longer being produced[56] and replacement meters will thus be harder and harder to come by.[57] Further, lost economies of scale relating to the reading of such meters[58] increases the cumulative burden imposed by preserving an analog meter option.

It is a well-established tenet of ratemaking that reasonable operating expenses and investments made by a utility in order to provide service to ratepayers are appropriately recovered from ratepayers. Likewise, the provision of service through non-standard technology to accommodate a request by a customer that results in higher costs for the utility can be appropriately addressed by provisions to recover the additional cost for a portion of it from those customers who cause the cost to be incurred.

D. The Agreement Does Not Discriminate Against Customers Utilizing Non-Standard Meters.

Mr. Woodward directs a substantial portion of his brief to criticizing the rate treatment relating to the deployment of AMI meters and the treatment of customers who elect not to use an AMI meter. Contrary to his assertions, however, ratepayers who opt out of standard metering are not being discriminated against. Rather, the evidence is that they are the beneficiaries of preferential rate differences. As discussed earlier, the Agreement adopts a cost for meter reads for ratepayers with

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[55] Tr. Vol. II at 259; *Id.* Vol. IV at 628.

[56] Bordenkircher Reb. SA Test., Ex. APS-10 at 8.

[57] Tr. Vol. V at 765 (testimony of Mr. Bordenkircher acknowledging a finite capacity to refurbish a meter before replacement is necessary).

[58] Tr. Vol. VI at 960-61 (admission by Mr. Woodward acknowledging foregone economies of scale relating to reading analog meters).

non-standard meters that is below the actual cost incurred. The consequence of this is that other ratepayers will subsidize the choices of those who opt out of using an AMI meter.

Mr. Woodward attempts to bolster the assertion of discriminatory treatment by comparing residential ratepayers opting out of standard metering with remotely located customers who are simply too remote for AMI metering to function. APS witness Bordenkircher testified that at the end of 2015 there were approximately 3,684 customers (1,840 residential and 1,844 commercial customers) located where it is not possible to implement AMI metering.[59] However, the comparison of ratepayers opting out of standard metering to these remotely located customers is inapposite. APS has been clear that for the customers that are incapable of being served with an AMI meter, APS will not charge them for the additional cost to serve them.[60] This is appropriate because for these customers it is beyond their control whether to use an AMI meter.

Nor is there any merit to Mr. Woodward's claims of discrimination against analog meter users due to the Agreement's adoption of a requirement that solar customers must accept an AMI meter since the customers who cannot use AMI meters are not similarly bound. The billing paradigm for solar customers requires that they be served by an AMI meter. There is no similarity with remotely located analog meter users.

Finally, Mr. Woodward takes issue with the 20-year service life for AMI meters adopted in the Agreement. Despite Mr. Woodward's arguments that the 20-year service life is too long, the evidence demonstrates that it is an appropriate life based on the available data and record evidence.[61] Additionally, Mr. Bordenkircher acknowledged that if operating experience demonstrates that the service life adopted in the Agreement should be reduced, the Commission will have the ability to adjust it to something more appropriate in a future rate case.[62] Consequently, if a correction to the

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[59] APS Resp. to Woodward Data Request 2.10, Ex. Woodward 2-5.

[60] *See* Woodward Ex. 205. *See also* Tr. Vol. I at 156-57 (discussing APS response to data request indicating that it is appropriate to charge more to customers to be on non-standard metering as opposed to those who are on non-standard metering without having a choice to do so).

[61] Bordenkircher Reb. SA Test., Ex. APS-10 at 8; *See also e.g.*, Tr. Vol. VI at 1013-17.

[62] Tr. Vol. V at 766.

depreciation rate is warranted, there is already a regulatory mechanism to make the appropriate correction.

VII. REPLY TO RICHARD GAYER.

A. The Settlement Process Was Not A Sham.

Like Mr. Woodward and the Districts, Mr. Gayer takes issue with the settlement process alleging that it was a "farce and a sham."[63] Mr. Gayer asserts that there is no place in rate cases for "private and secret" settlement discussions between APS and private corporations and that settlements become a "steamroller against dissent and disagreement."[64] He claims that the Agreement dictates everything making the hearing process perfunctory in nature.[65] 0Mr. Gayer's claims reflect a serious misunderstanding of the process. The Commission is not bound to accept the provisions of the Agreement. The Commission will review the provisions of the Agreement and the evidence submitted in favor or against the Agreement to determine whether its provisions are in the public interest. Mr. Gayer and others in opposition to the Agreement were given the opportunity to participate throughout every step of the process and have very effectively made their points in opposition to the Agreement. Those are part of the record which the Commission will ultimately consider when it deliberates on the Agreement and whether it should be adopted.

Mr. Gayer expresses concern that Rule 408 acted as a veil of secrecy over the settlement process such that the contents of settlement discussions could not be revealed.[66] However, Staff disagrees with Mr. Gayer's assertion that "...at this time, since all Hearings are over and no harm whatsoever to the overall process can result from settlement disclosures now or could have in the past," it would be appropriate to make them public. If settlement discussions were disclosed, and parties' compromising of positions offered in the course of negotiations were made public, this would act to chill meaningful and candid discussions and would result in overall harm to the process. The ALJ's rulings regarding Rule 408 were appropriate in this case.

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[63] Gayer Post-Hearing Br. at 3.
[64] *Id.* at 5.
[65] *Id.*
[66] *Id.* at 4.

B. The Charges For Non-AMI Meters Are Appropriate.

Mr. Gayer argues that there should be no additional charge for reading non-AMI meters, and that the cost of such readings should be spread among all of APS's customers.[67] As discussed earlier, a good deal of the cost of the monthly meter reads is being spread over all ratepayers. The $5.00 per month charge for non-standard meter reading for customers who opt-out of having an AMI meter is lower than the $15.00 cost that APS incurs and has supported. Therefore, Mr. Gayer and other AMI meter opt-out customers benefit from the Agreement's provisions.

Mr. Gayer also argues that treating similarly situated customers differently violates A.R.S. Section 40-334 which provides:

> (A) A public service corporation shall not, as to rates, charges, service facilities or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage.
>
> (B) No public service corporation shall establish or maintain any unreasonable difference as to rates, charges, service facilities or in any other respect, either between localities or between classes of service.

Mr. Gayer argues that APS is treating its non-AMI customers in a discriminatory fashion by requiring them to pay $60.00 additional per year. The statute referenced by Mr. Gayer prohibits "unreasonable" differences in rates, not all rate differences.[68] Here the rates charged for non-standard meter customers like Mr. Gayer are not unreasonable because they are based upon an increased cost to provide non-standard service to these customers.

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[67] *Id.* at 6.

[68] *See*, City of Tucson v. Clear Channel Outdoor, Inc., 218 Ariz. 172, 181 P.3d 219 (App. 2008).

VIII. CONCLUSION.

The provisions of the Settlement Agreement are in the public interest and should be adopted without any modification.

RESPECTFULLY SUBMITTED this 1st day of June 2017.

Maureen A. Scott, Deputy Chief of Litigation/Appeals
Wesley C. Van Cleve, Senior Staff Counsel
Charles H. Hains, Staff Counsel
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

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Matthew E. Price
JENNER & BLOCK
1099 New York Avenue, NW, Suite 900
Washington District of Columbia 20001-4412

Kurt Boehm
BOEHM, KURTZ & LOWRY
36 E. Seventh St. Suite 1510
Cincinnati Ohio 45202

Richard Gayer
526 W. Wilshire Dr.
Phoenix Arizona 85003
rgayer@cox.net
Consented to Service by Email

Timothy M. Hogan
ARIZONA CENTER FOR LAW IN THE PUBLIC INTERST
514 W. Roosevelt St.
Phoenix Arizona 85003
thogan@aclpi.org
ken.wilson@westernresources.org
schlegelj@aol.com
ezuckerman@swenergy.org
bbaatz@aceee.org
briana@votesolar.org
cosuala@earthjustice.org
dbender@earthjustice.org
cfitzgerrell@earthjustice.org
Consented to Service by Email

Michael Patten
SNELL & WILMER, LLP
One Arizona Center
400 East Van Buren Street
Phoenix Arizona 85004
mpatten@swlaw.com
jhoward@swlaw.com
docket@swlaw.com
BCarroll@tep.com
Consented to Service by Email

Albert H. Acken
One N. Central Ave Ste 1200
Phoenix Arizona 85004
aacken@rcalaw.com
ssweeney@rcalaw.com
slofland@rcalaw.com
jjw@krsaline.com
Consented to Service by Email

Thomas Jernigan
Federal Executive Agencies
U.S. Airforce Utility Law Field Support Center
139 Barnes Drive, Suite 1
Tyndall Air Force Base Florida 32403
thomas.jernigan.3@us.af.mil
ebony.payton.crt@us.af.mil
andrew.unsicker@us.af.mil
lanny.zieman.1@us.af.mil
natalie.cepak.2@us.af.mil
Consented to Service by Email

Nicholas J. Enoch
LUBIN & ENOCH, PC
349 N. Fourth Ave.
Phoenix Arizona 85003

T. Hogan
ARIZONA CENTER FOR LAW IN THE PUBLIC INTEREST
514 W. Roosevelt Street
Phoenix Arizona 85003

Timothy J. Sabo
SNELL & WILMER, LLP
One Arizona Center
400 East Van Buren, 19th Floor
Phoenix Arizona 85004
tsabo@swlaw.com
jhoward@swlaw.com
docket@swlaw.com
pwalker@conservamerica.org
Consented to Service by Email

Thomas A Loquvam
PINNACLE WEST CAPITOL CORPORATION
400 N. 5Th St, MS 8695
Phoenix, Arizona 85004
Thomas.Loquvam@pinnaclewest.com
Thomas.Mumaw@pinnaclewest.com
Melissa.Krueger@pinnaclewest.com
Amanda.Ho@pinnaclewest.com
Debra.Orr@aps.com
prefo@swlaw.com
Consented to Service by Email

Cynthia Zwick
ARIZONA COMMUNITY ACTION ASSOCIATION
2700 N. Third St. - 3040
Phoenix Arizona 85004
czwick@azcaa.org
khengehold@azcaa.org
Consented to Service by Email

Jay I. Moyes
MOYES SELLERS & HENDRICKS, LTD
1850 N. Central Ave. - 1100
Phoenix Arizona 85004
JasonMoyes@law-msh.com
jimoyes@law-msh.com
jim@harcuvar.com
Consented to Service by Email

Greg Patterson
MUNGER CHADWICK
916 W. Adams Suite 3
Phoenix Arizona 85007

Anthony Wanger
IO DATA CENTERS, LLC
615 N. 48th St
Phoenix Arizona 85008

Giancarlo Estrada
KAMPER ESTRADA, LLP
3030 N. 3rd Street, Suite 770
Phoenix Arizona 85012
gestrada@law.phx.com
kfox@kfwlaw.com
kcrandall@eq-research.com
Consented to Service by Email

Scott S. Wakefield
HIENTON & CURRY, PLLC
5045 N 12th Street, Suite 110
Phoenix Arizona 85014-3302
swakefield@hclawgroup.com
mlougee@hclawgroup.com
Stephen.chriss@wal-mart.com
Greg.tillman@walmart.com
chris.hendrix@wal-mart.com
Consented to Service by Email

Patrick J. Black
FENNEMORE CRAIG,P.C.
2394 E. Camelback Rd, Ste 600
Phoenix Arizona 85016
pblack@fclaw.com
khiggins@energystrat.com
Consented to Service by Email

Tom Harris
ARIZONA SOLAR ENERGY INDUSTRIES ASSOCIATION
2122 W. Lone Cactus Dr. Suite 2
Phoenix Arizona 85027
Tom.Harris@AriSEIA.org
Consented to Service by Email

Daniel Pozefsky
RUCO
1110 West Washington, Suite 220
Phoenix Arizona 85007

Andy Kvesic
ARIZONA CORPORATION COMMISSION
Director- Legal Division
1200 West Washington
Phoenix Arizona 85007
LegalDiv@azcc.gov
utildivservicebyemail@azcc.gov
MScott@azcc.gov
CHains@azcc.gov
WVanCleve@azcc.gov
TFord@azcc.gov
EVanEpps@azcc.gov
CFitzsimmons@azcc.gov
KChristine@azcc.gov
EAbinah@azcc.gov
Consented to Service by Email

Meghan H. Grabel
OSBORN MALEDON, PA
2929 N. Central Avenue Suite 2100
Phoenix Arizona 85012
mgrabel@omlaw.com
gyaquinto@arizonaic.org
Consented to Service by Email

Mary R. O'Grady
OSBORN MALEDON, P.A.
2929 North Central Aveue, 21st Floor
Phoenix Arizona 85012

Garry D Hays
LAW OFFICES OF GARRY D. HAYS, PC
2198 East Camelback Road, Suite 305
Phoenix Arizona 85016
ghays@lawgdh.com
Consented to Service by Email

John William Moore, Jr.
MOORE BENHAM & BEAVER, PLC
7321 N. 16th Street
Phoenix Arizona 85020

Craig A. Marks
CRAIG A. MARKS, PLC
10645 N. Tatum Blvd.
Suite 200-676
Phoenix Arizona 85028
Craig.Marks@azbar.org
Pat.Quinn47474@gmail.com
Consented to Service by Email

Dennis M. Fitzgibbons
FITZGIBBONS LAW OFFICES, PLC
P.O. Box 11208
Casa Grande Arizona 85230
denis@fitzgibbonslaw.com
Consented to Service by Email

Ann-Marie Anderson
WRIGHT WELKER & PAUOLE, PLC
10429 South 51st Street, Suite 285
Phoenix Arizona 85044
aanderson@wwpfirm.com
sjennings@aarp.org
aallen@wwpfirm.com
john@johncoffman.net
Consented to Service by Email

Court S. Rich
ROSE LAW GROUP, PC
7144 E. Stetson Drive, Suite 300
Scottsdale Arizona 85251
crich@roselawgroup.com
hslaughter@roselawgroup.com
cledford@mcdonaldcarano.com
Consented to Service by Email

Greg Eisert
SUN CITY HOME OWNERS ASSOCIATION
10401 W. Coggins Drive
Sun City Arizona 85351
gregeisert@gmail.com
steven.puck@cox.net
Consented to Service by Email

Patricia C. Ferre
P.O. Box 433
Payson Arizona 85547
pFerreact@mac.com
Consented to Service by Email

L. Robertson, Jr.
210 Continental Road, Suite 216A
Green Valley Arizona 85622

Warren Woodward
200 Sierra Road
Sedona Arizona 86336
w6345789@yahoo.com
Consented to Service by Email

By: K Christine
Karyn L. Christine
Executive Legal Assistant

Thomas E. Stewart
GRANITE CREEK POWER & GAS/GRANITE CREEK FARMS
5316 East Voltaire Avenue
Scottsdale Arizona 85254-3643
tom@gcfaz.com
Consented to Service by Email

Albert E. Gervenack
SUN CITY WEST PROPERTY OWNERS & RESIDENTS ASSOCIAT
13815 Camino Del Sol
Sun City West Arizona 85375
al.gervenack@porascw.org
rob.robbins@porascw.org
Bob.miller@porascw.org
Consented to Service by Email

Lawrence V. Robertson, Jr.
210 Continental Road, Suite 216A
Green Valley Arizona 85622
tubaclawyer@aol.com
Consented to Service by Email

Charles Wesselhoft
Pima County Attorney's Office
32 North Stone Avenue, Suite 2100
Tucson Arizona 85701
Charles.Wesselhoft@pcao.pima.gov
Consented to Service by Email

Robert Pickels, Jr.
Sedona City Attorney's Office
102 Roadrunner Drive
Sedona Arizona 86336
rpickels@sedonaaz.gov
Consented to Service by Email